BOARD OF SELECTMEN MEETING MINUTES 1/12/10

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The Board of Selectmen met in the Town Hall, Joseph F. Bilotta Meeting Room as scheduled with Thomas Alonzo, Paula Bertram, Steven M. deBettencourt, Thomas Mason, Dave Matthews and Town Manager Kerry Speidel present. Recessed Regular Session at 6:12 P.M. and opened Executive Session by roll call vote; Steve aye, Tom A. aye, Paula aye, Tom M. aye and Dave aye, at this time for the purpose of considering the disposition of real property when having in open session would be detrimental to the town's negotiating position per MGL Chapter 39, §23B (6), Chairman announced that the Board will be returning to Regular Session. Regular Session reconvened @6:42 PM and recessed until 7:00 PM at which time Regular Session was reconvened with the Pledge of Allegiance.

PUBLIC DISCUSSION

ANNOUNCEMENTS

1. Chair announced that a spaghetti supper is scheduled for January 19th @ the Eagle House Senior Center from 4:00 to 7:00 pm sponsored by the Lunenburg Family Lions Club in to raise money to help them name a NEADS service puppy (snow date is 1/21/10). Paula stated that NEADS is a program that provides dogs for deaf and disabled Americans. Their goal is to raise \$1000.00 to name a puppy "Gillis" in memory of Lion Club Charter Member Donald Gillis a former teacher at Lunenburg High School and Superintendent of the Lunenburg Water District who passed away suddenly last year.

Town Hall will be closed Monday, January 18th in honor of Civil Rights Day.

Also, the Town Clerk requests that an announcement is made regarding absentee voting. Normally the last day and hour for absentee voting would be noon the day before the election. Monday, January 18th is Martin Luther King Day (Civil Rights Day), municipal offices will be closed. As a result, the Town Clerk's Office will be open until 5:00 PM on Friday, January 15th to accommodate those who will not be able to vote at the polls on January 19th. Polls are generally opened from 7:00 AM to 8:00 PM.

H1N1 Flu Clinic Schedule, Lunenburg: 1/20/10, 9AM-11AM, Eagle House Senior Center, 25 Memorial Drive, Lunenburg. CHILDREN 9 AND YOUNGER CAN ATTEND THESE CLINCS TO RECEIVE THEIR SECOND DOSE OF THE VACCINE. THE SECOND DOSE MUST BE ADMINISTERED 21-28 DAYS AFTER THE FIRST DOSE. Vaccine administered in accordance with the guidance from the Massachusetts Department of Public Health. Those guidelines are listed below.

- All persons 6 months to 24 years of age;
- Pregnant women, up to 2 weeks post partum (including after pregnancy loss);
- Household contacts and caregivers of infants younger than 6 months of age;
- · Household contacts of pregnant women in their third trimester to ensure their newborns go home to a safe environment; and
- Healthcare personnel with direct patient contact.
- Adults 25 64 years of age with high risk conditions; high risk conditions include:
- Pulmonary (including asthma)
- Cardiovascular (except hypertension)
- Renal, hepatic, cognitive, hematologic, neurologic/neuromuscular, or metabolic disorders (incl. diabetes mellitus)
- Immunosuppression (incl. that caused by medications or by HIV)

Please contact the Lunenburg Board of Health for further information or guestions, at (978) 582-4146, extension 430, ask for Andrea.

APPOINTMENTS

1. 7:00 PM, Town Hall Office Space Renovations – Kerry reviewed the plan provided to her from Pat Slattery on the changes to town hall, which would involve the addition and removal of some walls. Informed the board that we have an amount of money left over in the sale of the old chief's house, approximately \$50,000 that we can use upon the approval of town meeting. Kerry has met with staff members, and has circulated this plan around and one of the issues that we have is that the building is not ADA compliant with the number of restroom fixtures and we would like to get at least one handicap compliant restroom. Also, noted that the Treasurer/Tax Collector area really needs to be a secure area so that at the end of the day the area could be locked off. Right now no changes are proposed to the existing restrooms or the Assessor's Office. Noted that there is some discussion between the Plumbing Inspector and Building Inspector as there is some concern about the requirements under ADA and there is still discussion on the possibilty of combining the existing men's and women's restroom into another unisex handicap accessible restroom which would allow us to expand the current Assessor's office. Would also like to be able to recarpet the entire building. Kerry will be contacting Monty Tech and the

Sheriff's office to assist with building counters and painting. Mike (Building Inspector) will be getting some estimates on the various options including new carpets. Board discussed possiblity of Monty Tech installing the walls as well as the counters. Kerry would like to have the estimates available so that we could pull something together for Town Meeting. Also noted, that at some point in the future we will need to look at records management.

- 2. 7:15 PM, Public Hearing Dog Complaint, 14 Mays Field Road per MGL Chapter 140, § Chair opened the public hearing as follows: In accordance with M.G.L. Chapter 140, §157, a public hearing has been scheduled for January 12, 2010 @ 7:15 PM, in the Joseph F. Bilotta Conference Room, 2nd floor, Town Hall, 17 Main Street, Lunenburg. Hearing is to review and determine what action may be deemed necessary upon the investigation report of the Dog Officer, Kathleen Comeau. Said investigation was ordered by the Town Manager, Kerry Speidel following numerous complaints of vicious or barking dog(s) owned or harbored by Phyllis Asetta, 14 Mays Field Road, Lunenburg, MA. Sincerely, Laura Williams, Chief Administrative Assistant. Chair announced the dog hearing procedure as follows:
 - 1. Ground rules; Open the official hearing, everyone testifying must be sworn in and informed of order of proceedings.
 - 2. Swear in complainant (can also swear in anyone who will provide testimony)
 - 3. Complainant presents his/ her testimony
 - 4. Owner/ Keeper presents his/ her testimony
 - 5. Witnesses testify
 - 6. Board asks questions & deliberates
 - 7. Board Makes a Finding
 - 8. Board determines option

Board will determine the possible findings:

- 1. That the dog at issue constitutes a "nuisance" to the community, and the dog constitutes a nuisance because: a) it has a vicious disposition; b) it barks excessively, or c) it creates some other disturbance (needs to be explained).
- 2. That the dog, as a result of such barking or other disturbance, causes annoyance to a sick person within the jurisdiction of the responsible board or official.

Range of options if there is a finding: 1. restraint, 2. banishment or 3. euthanization.

If a finding is made, the owner/ keeper informed that there is an appeals procedure set forth in MGL Chapter 140, Section 157.

Laura swore in group accordingly: "Do you solemnly swear that the testimony you are about to give is the whole truth, so help you God?" All answered affirmative, sign in sheet delivered to board.

Complaintant, John MacClure of 7 May's Field Road came before the board and read excerpts of the attached letters that he sent detailing the events. Noted the incident of June/July 2009 and that during the incident the dogs mouths came into contact with both himself and his son. As a father completely powerless to do anything and Mr. Asetta was not able to get his dogs to respond. Also, noted the incident in the same time frame when Kathy Remse noticed the dogs on another neighbors property. When this first happened he knew that Lunenburg didn't have a leash law and that there was no way to prevent this type of thing from happening. Asking that these dogs be controlled by however means are necessaty to be done, these dogs appear to be 80 to 100 lbs. Don't want a terrible tragedy to happen and as a father has a great fear that something will happen.

Chair questioned if the dogs remained on their own property or had they gone beyond their property. Per John they were off their property left their yard and went into the road.

Steve questioned at what point did you call the dog officer, and Mr. MacClure noted that he did not call Kathy.

Complainant Kathy Remse of 12 May's Field Road informed the board that her property directly abuts the Asetta's and she has seen the dogs out with Mrs. Asetta. Recalled incident on November 1st; she was leaving her house to get into her car and she heard something running towards her and she screamed as their dog was coming after her. Mr. Asetta called the dog, who turned and went into the backyard. Called Kathy Comeau a few days later as she knew there was no leash law to question if she could use mace or a tazer. Kathy C., questioned why and what had occurred. Kathy R. informed Kathy C. of the incident and also noted that her son was a friend of Conner Laurens (prior dog attack incident) and is in fear for his safety. Kathy C. informed Ms. Remse that she would be in contact with the Asetta's regarding the incident and would require them to restrain their dogs.

Chair questioned number of dogs and per Kathy Remse, there are two however, the incident was with one dog. Her perception was that the dog thought that she was on their property. He came after her and stood in a strong stance looking at her, not growling or barking. She has had dogs in the past and knows that animals are unpredicatable in general and is in fear for her family.

Steve questioned if November 1st was the only incident you had with this dog and per Kathy R. it was the only time that it came at me. Noted an incident where the dog was on the property, but no one was out in the yard at the time.

Chair questioned if you've been outside and noticed if the dogs have been unrestrained since the restraint order. Per Kathy Remse they have been restrained whenever she's seen them out since the incident, but her concern is that the Asetta's are not able to restrain them when they are not with them. Would be satisfied if there were a strong fence to restrain the dogs and leashed when they are out walking with the dogs, they are restrained at all times.

Dave clarified that the dogs have been restrained since the dog officer responded and Kathy Remse affirmed that they have been restrained.

Phylis and Alan Asetta of 14 May's Field Road owners of the dogs provided the attached letter to the board. Mrs. Asetta informed the board that the dogs are two staffordshire terriers, and that they had never been informed by the neighbors that they had been terrified by any incidents. Not aware of an issue until she received a call from dog officer Kathy Comeau about the Remse incident. Since then they have kept the dogs within an enclosed area in the back of their yard and would abide by the order to keep their dogs restrained at all times. Noted that the incident where Alan yelled for the dogs when they bolted as they are in training, also noted that Alan has a hearing loss which may have made hearing Ms. Remse calls difficult. She also noted an incident where Ms. Remse came over and the younger dog licked her and was friendly towards her and they discussed the dogs and no mention was made to her (Mrs. Asetta) of her (Ms. Remse) fear at that time. She (Ms. Remse) said she had no problem with dogs as she was raised with dogs. Reiterated that since they have moved here they have never received a complaint from any neighbor. "We were personally never contacted by anyone," We are not incapable of controlling our pets. We have four children and six grandchildren. We have never, nor would we ever, have a dog in our home that would jeopardize the well-being of our family." Mrs. Asetta refered to the letter that Mr. MacClure sent to the Board of Selectmen in which Mr. MacClure stated the incident occurred months prior and noted that they have had neighborhood children and their parents come to their home for Trick or Treat, even this past year.

Mr. Asetta informed the board that Riley the 18 month old male dog is 46.2 lbs and Stucka the 6 yr old, is 49.6 lbs. they are up to date on their shots, are bonded and insured and has documents from a behavioral scientists and letters signed from her and records from the dogs veterinarians which were submitted as evidence. Dogs have never jumped the fence in their back yard, however did

acknowledge that the dogs have been on other neighbors property.

Chair questioned if having the dogs restrained to the property will be a problem and per Mr. Asetta this is not and has not been a problem as we have kept them restrained. According to Mr. Asetta these are not pit bulls as Mr. MacClure has stated, but American Staffordshire Terriers. These dogs have been around children and their grandchildren, these dogs are not the pit fighting dogs that you read about. The charge is all the dog did, he wanted to play with these people and anyone who knows this dog can testify to this, there was no life threatening situation. There have been pit bull type dogs in the neighborhood but they are not theirs. They never let these dogs out to just roam.

Tom M. questioned what steps have you taken to control the dogs, and per Mr. Asetta they are fenced in in the back yard, have shock collars and are constantly leashed when walked. When they were out prior to the reported incident, the dogs were in the yard

unrestrained, and not leashed and there were times when children came into the yard and there was no viciciousness.

Kathy Comeau informed the board that she received the phone call on November 4th and immediately phoned Mrs. Asetta and she (Mrs. Asetta) stated that she would keep the dogs restrained. Noted the first letter that the Board of Selectmen received from John MacClure and she immediately called Ms. Remse and was informed by her that he (MacClure) stated that he wants a papertrail and that she (Remse) had not had another incident with the dogs. Called the office and informed them of the response from Ms. Remse and believed that the situation had been taken care of and then the office received the second letter. Kathy C. went home from the Board of Selectmen office and called Mr. MacClure, and appologized to him as she believed that the issue had been taken care of however, she still doesn't really know what he wanted. We would have responded, but Ms. Asetta was doing what she was told and the dogs were restrained. Kathy C. had previously met the dogs and as such she didn't go to the Asetta's which didn't change the fact that the neighbors were frightened and Mrs. Asetta understood that.

Chair questioned if in your capacity do you feel that the current order is sufficient to keep these dogs restrained and per Kathy C. the order should resolve the issue.

Chair opened hearing to general witnesses.

Kerri Bailey, a manager at the Lancaster Animal Shelter, stated that she wants to testify on behalf of the Assetta family. She said the dogs have never exhibited any dangerous behavior. "I'm here to say from an observational standpoint and a professional standpoint that these are two of the sweetest dogs I've ever met. I know how a pit bull can be perceived as terrifying in society. But these dogs are very sociable." There doesn't appear to be any protectiveness and aggressiveness. However she can understand why it would be scary when approached by a dog. Noted that she has been in the animal industry for 10 years. Owns a proclaimed pitbull mix and has taken it upon herself to ensure that the dog is always restrained.

George Sanders, 672 Great Road, Littleton MA, hasn't seen the dogs and is here to speak about dogs in general. Dogs will bite, they even turn on their owners and this is no different as it's a part of reality. Noted MGL are very clear and from his perspective, the public has a right to be free to walk about on public ways without fear of any dog. Noted that the dog must be under leash control at all times and no one is asking them to do anything that the law doesn't state they need to do. People want to be able to get along but when you get on to the public ways, the state has a law that tells us what they dog owners are to do and have control over the dog at all times.

Mike Boucher, 10 May's Field Road, he has 5 year old son and also owns a boarder collie, have never seen an incident where the Asetta's dogs have been aggressive, not worried when his son is out riding in the street and does know that if there ever were a problem he could easily go to his neighbors.

Alethea Morris, 11 May's Field Road one of the reasons that people don't want to complain is because we all want to get along. Have been charged by these dogs once, also she has been bitten in her life twice so she knows how it feels. Also noted that she has small children, some of her children have been scared by these dogs, but she has not complained as they try to get along with one another as this is a small development, her suggestion is just the electronic collars and an electronic fence.

Chair questioned why no one ever went to the owners and per Alethea she was only approached by the dogs the one time and hoped that this was the only time, which it was.

Mr. MacClure noted that on the documented occasions Mr. Asetta was in his driveway and the two dogs came out into the street and towards us. Mr. Asetta was not able to control his dogs at this time. On the second incident, Mrs. Asetta was able to get her dogs back. The first time that it happened assumed that this was the first time that the dogs had gone off their property and where Mr. Asetta saw this, Mr. MacClure figured that he (Mr. Asetta) wasn't going to let it happen again. On the second incident it was Mrs. Asetta that was with the dogs. He still feels that dogs that are not controlled are a threat. On the third occasion when he heard about Kathy Remse, he felt he had to do something about this as this was continuing to happen.

Kathy Remse informed the board that she had spoken with Kathy Comeau and she truly felt threatened by the dogs, Mr. Asetta never appologized, never called and that is why she never called the owners. She was afraid for her life, would like to see what the fence looks like. Noted that these dogs are a form of pit bull and now her children do not go onto the Asetta's property.

Chair noted that the law does not give us any jurisdiction about the breed, we're talking about individual dogs and not a specific breed. Christopher Commings, 190 Foster Road, Ashby, son of the Asetta's and father of 4 children; all have grown up around these dogs. Never did he feel his children were in danger, he wouldn't bring them into a violent setting. Would expect that if there were a problem then the responsible thing to do would be to go to the neighbor and discuss the issue with them. Noted that any dog could be vicious and if you feared a dog you wouldn't wait months before you sent a letter.

Chair closed testimony. Paula appreciates the fears of the neighbors and with the testimony of the animal behaviourist, noted that the dog owners have complied with the order and see no reason for this board to go any further with their findings.

Dave noted that the more you hear, it levels the event off. Noted the tragedy that occurred with the Lourens' family and that we don't know what causes a dog to turn. Dogs act differently than they do at home, the dogs have been fenced and leashed and this is the concensus that we've heard from everybody and as long as the Asetta's maintain this, there shouldn't be any further issues. If the neighbors don't know what the issue is they can't address the problem. In this case the effort is being made to address the problem now that it's known.

Tom M., clear that the owners of the dog have controlled the dogs per Kathy's order, neighbors don't know the dogs and each person has their own perception of vicious or aggessive, and concurred that each person has the right to walk the neighborhood. Agree with Paula and Dave that no further action needs to be taken. Steve noted the only thing that seems to have lagged is that this had been going on for a year and Kathy C wasn't notified, the law doesn't say that nothing can be done, the dog officer has to be notified. The problem would have probably been taken care of a year ago and questioned why we're here when the problem has already been rectified.

Chair would agree with what has been said by the board members, someone's perception of what is a vicicous dog is subjective depending upon who you speak with. A matter of what needs to be done to enforce an issue and the Asetta's have agreed to the order and don't see any need of this board to either rescind or further address this issue. Order is sufficient that the dog not be allowed off of your property without restraints. Read the following order that was issued by the dog officer: November 5, 2009, Mr. & Mrs. Alan Asetta, 14 Mays Field Road, Lunenburg MA 01462. Dear Mr. & Mrs. Asetta: As Animal Control Officer for the Town of Lunenburg, and in accordance with M.G.L. Chapter 140, §157, I am ordering you to restrain your dogs to your property and to keep your dogs under your control at all times this directive is due to complaints regarding your two pit bulls. Failure to comply with this directive will result in a hearing before the Board of Selectmen for investigation as to the disposition of your dogs. Sincerely, Kathleen Comeau, Animal Control Officer.

We are not saying that this is a directive but that the order issued by the dog officer is sufficient.

Tom M., as Kathy is here tonight he would like to have her explain what the restraint law in Lunenburg means.

Per Kathy C., as we don't have a leash law everydone seems to think we don't have any laws. We have a restraint law which was written a number of years ago. If a dog is a nuisance, the people just need to call her and she'll respond. She needs to be informed, noted that when Kathy R. called her she wasn't initially lodging a complaint and when Kathy C., questioned what was going on and that Kathy R. was nearly in tears because of fear from the dog incident. Again, communication, there is no reason why anyone can not walk peaceably, it doesn't take long to take care of the problem, but she just didn't know about the incident. People should know where their dogs are at all times, shouldn't leave for work and leave the dogs out. The Asetta's were mortified when they found out about the incident and I don't think that the Asetta's knew quite what to do. Kathy C. also spoke with another neighbor, Mrs. Cucchiara, and she had never ever had an encounter with those dogs, although she was extremely nervous when the Asetta's moved in.

Paula move that no action be taken by this board and that the order issued by the animal control officer remain in full force and effect, Steve seconded voted unanimously. End @ 8:40 PM.

CURRENT BUSINESS

1. Manager Updates

DPW Facility Study Committee - Board had approved the charge and the composition of the committee. Kerry provided the recommendation from herself and DPW Director, Jack Rodriquenz for the board to appoint members and questioned if the board would like to have any of the candidates in for an interview next week. She has spoken to the applicants, as has Jack, and she is satisfied with the applicants and would make the following recommendations: To fill the seat designated to an Architect, Engineer or person with significant commercial building experience: Pat Slattery. To fill the seats designated to persons employed, preferably in management or owner capacity, in similar fields: Dave MacDonald; Steve Powell; and Dan Proctor. To fill the seat designated to Resident-at-Large: Jay Simeone. Paula would recommend that we move forward with

appointing these individuals as she has worked in the past with some and as such moved to appoint the individuals as requested, Dave seconded voted unanimously.

- ➤ Kerry received correspondance regarding property owned by the Padula/Shirley Road Realty Trust, option to purchase would expire May 11, 2010, under Chapter 61A. We have asked the Planning Board and Conservation Commission respond by February 9th. Per Chair the question we want to know is, is it worth our attempting to buy or not.
- 2. Minutes Board of Selectmen regular session for 1/5/10 reviewed and signed.

Warrants - # 1/12/10 - \$556,999.19 reviewed and signed.

Action File Issues – Dave doesn't recall seeing the dog complaint in the action file, and questioned if there is a way we can highlight important issues and bring this out. Chair noted that if we receive anything in the action file that triggers a public hearing would like to be informed. By the letter of what's in the statute, if someone complains of a vicious dog then it triggers a hearing.

Per Kerry, a complaint doesn't automatically trigger a hearing but if the complaint is not taken care of through the animal control officer, then she as Manager would request an investigation from Kathy.

Paula noted a letter from town counsel in the action file on emails and retention and would like to know what our policy on retention is so that we know what is our requirement is under the law.

3. Disposition Real Property - No action

4. Special Municipal Employee Designation – Planning Board Consultants – Planning Director Marion Benson came before the board to request that the Board of Selectmen designate peer review engineers for the Planning Board as Special Municipal Employees. Spoke with Kerry as this seemed to have been an issue and has an opinion from Attorney Brian Riley of Kopelman & Paige. Refered to the attached letter that specified that it is for the position and not individual persons. Any reviewing engineered hired through town amentities hired by an outside be declared special municipal employees. Paula noted the language stating combined hours and questioned if Marion has written correspondance with regards to this as she would like to see this as it states 500 hours the position of a peer consulting engineer not the company. There can be numerous individuals serving in the capacity as it states that it's the office, in this case therefore the office should not exceed 500 hours per year. But, this is not what Marion is saying, referenced letter of December 14th, in this letter the amount of hours was increased from 500 to 800. Every project that requires a peer review consultant, then they are entitled to 800 hours within the project.

Board has not seen the December 14th letter and therefore would ask for further information from Town Counsel as it seems that the information has been changed. Paula would like to table this discussion so that the board can see the information provided from town counsel. Per Kerry, seems like were getting to the point of ridiculousness as we seem to be going back and forth. Question is do we have a concern that all of our hours would exceed the 800 hours, not sure if this is a particular issue. The concern is that if they are designated a peer review, then what can they do for other clients. The letter of October clearly defines a firm versus a sole proprietorship. The way they've designated the office appears to completely circumvent the intent of the law, just trying to prevent ourselves or them from having an issue.

Marion noted that Steve Marsden is not a sole proprietor as he has a couple of engineers that work with him.

Chair would like to have the letter from December 14th as well as the email that Marion received as it is the intent of this board to avoid any appearance of conflict of interest.

Paula important that the 800 hours per year is clarified, whether it is per year or per project.

Dave would like some clarity, as it appears that no matter what, if they're a peer reviewer for the Planning Board they still can't come back before the Planning Board for any project.

Chair would like to know if other municipalities in this region designate special municipal employees peer review engineers.

Tabled for further information. Dave requested an updated list of Special Municipal Employees.

5. Town Meeting Schedule (draft) - tabled

OLD BUSINESS

- 1. Committee Updates -
 - Dave Capital Planning met today with the Eagle House (Senior Center) and discussed the additional parking area and they are trying to get grant money and need to get a better feel for what the cost would be
 - > Paula the workshop with Sewer Commission for 1/21/10 @ 6:00 PM.
 - > Dave open meeting to the public with the School Committee and the Finance Committee.
- 2. License Commission Regulations / Policies & Procedures Paula noted that what was the meat of what we wanted to adopt, town counsel is stating that we can't do, section 1.20 further action tabled to next week.

3. West Street Parcels – Declaration Surplus Property (MGL Chapter 30B, §16) - Minimum Bids – Dave, if we set minimum bid, we're pretty much setting the sale price. Kerry noted that the land has variable value to anybody but the abutter.

Kerry recommends that the board for parcels #1-9 @ 50% of the increase in assessed value (AV) which would be #1 & #2 @ \$3,550 and #'s 3-9 @ \$7,200 and for parcel #10 @ \$4,500.

Paula motion to declare parcels 1 through 10 as identified on the plan as surplus property available for disposition, Steve seconded, voted unanimously to approve.

Paula motion to set the minimum bid for parcels #1-9 @ 50% based upon the increase in value (AV). Dave second, voted unanimously to approve

Paula would recommend that the minimum bid for parcel #10 to be set at \$7,200 as are #'s 3-9 and would so make this motion, Dave seconded, voted unanimously to approve.

APPOINTMENTS/REAPPOINTMENTS

1. DPW Facility Study Committee -

Paula would recommend that we move forward with appointing these individuals as she has worked in the past with some and as such moved to appoint the individuals as listed;

According to Kerry the charge of the study committee is to determine the long-term viability of the current Department of Public Works facility, located at 520 Chase Road. The committee will be made up of five-(5) residents, with the DPW Director to serve as Ex-Officio (non-voting) member. The ideal composition of the committee will include one-(1) engineer, architect or person with significant commercial building experience; three- (3) persons employed preferably in management or owner capacity, in similar fields, and one-(1) resident at large. The committee will be charged with the following: 1. Evaluate current site and determine if it is adequate in terms of size and location, for current level of operation. 2. If current site is determined to be inadequate, the committee should detail site deficiencies and identify remedies to the best of its ability. 3. Evaluate current facility to determine suitability for current level of operation. 4. If current facility is determined to be unsuitable, the committee should detail deficiencies and identify remedies to the best of its ability. 5. If the committee determines that the current facility is inadequate, it should identify possible sources of revenue to make needed improvements. Specific attention should be paid to Green Alternatives. Dave seconded voted unanimously.

EXECUTIVE SESSION

1. Disposition of Real Property, MGL Chapter 39, §23B (6)

Being no further business board voted unanimously to adjourn Regular Session at 10:03 P.M.

Respectfully submitted,

Laura Williams, Chief Administrative Assistant Board of Selectmen

Town of Lunenburg

Animal Control Officer Kathleen M. Comeau



806 West Street Lunenburg, MA 01462 (978) 345-4957 FAX (978) 342-0363

Kathy Comeau, Animal Control Officer
Summary of incident of November 11, 2009 / Kathy Remse, 12 Mays Field Road

On November 11, 2009 I received a call from Kathy Remse of 12 Mays Field Road complaining of an incident that occurred on a previous Sunday when a neighbor's pit bull charged her in her own yard and she was very frightened. The dog is owned by the next door neighbor Allan & Phyliss Asseta of 14 Mays Field Road. Mr. Asseta was outdoors with the dog when the dog took off. He tried calling for the dog to retreat back and the dog kept going at a pace towards Kathy Remse. The dog then took off out back and was not listening at all. She also said other neighbors have had problems, but I was never called until November 22, 2009. I spoke to Phyliss Asseta who was aware because her husband told her what happened. I explained that her dogs were to be restrained from now on and that she would be receiving a letter from me telling her to do so. She said that dogs would be restrained. The letter was sent and received by certified mail by the Asseta's. She also said that up to that point dogs were never out unless her or her husband was with them.

On November 14, 2009 the Selectmen and myself received letters from John & Cheryl Maclure and David & Kathy Remse stating of other incidents. I called Kathy Remse to make sure that the dogs had not been seen loose and to question the letter. She said the dogs were not loose and that the letter from Mr. Maclure wanted to have on file a paper trail of events and had sent the letter. I thought I understood reasoning and told the Selectmen's office of my call. Prompt attention had already been taken and was on file.

On November 23, 2009 I received another letter to all of us that now he's requesting a response so I called him and he was very angry. He was very insulting to me. I tried to explain that I did not know that he wanted a phone call or response until second letter because situation was taken care of after the first dog complaint. I was in complete contact with the Selectmen's Office and if they felt an answer was necessary I felt they would respond. He accused me of passing the buck which I was not doing. I would have called after the first letter if I had realized that was what he wanted. Now the Selectmen's Office is calling a hearing which is fine. Both sides may talk it out. I did my job and had the dogs restrained and made sure they were licensed which they are after checking with the Town Clerk's records. I responded back to Selectmen from first day of the incident.

To all here present:

For over two years my husband, Alan, and I with our two Staffordshire Terriers have resided at 14 May's Field Road in Lunenburg. We have never been informed by anyone in this neighborhood that our dogs terrified them.

On November 4th of 2009 while entertaining two friends in my home I received a phone call from the Lunenburg Dog Officer, Kathy Comeau, stating that she had received a phone call from Mrs. Remse at 12 May's Field Road regarding an incident in her drive way in which our younger dog charged her, terrified her, and traumatized her. Kathy Comeau explained to me that because of this complaint I would receive a letter ordering my husband and I to keep our dogs restrained at all times on a leash or in an enclosed (fenced-in) area. I informed Kathy Comeau that we have an enclosed area in our back vard for the dogs and that we would restrain them when they are out of the enclosed area. In other words, we would comply completely with the order. During this phone call I informed Kathy Comeau that we were personally never contacted by Mrs. Remse about her grievous upset. Since I was not home at the time, my husband, Alan, informed me that he was so upset with Riley for running off while he was out doing fall clean-up that he ran after him which only made him bolt off into the back of the yards. Alan told me that Mrs. Remse yelled something at him but he could not hear what she said she was too far away. My husband has a hearing loss especially when there are background noises such as lawn equipment.

I also informed Kathy Comeau that one day this past summer while my husband and I were working on the frontage of our yard, Mrs. Remse came out her front door to discuss why her husband had taken over the upkeep of a portion of our property prior to our purchase, and pointed to a manicured area of side yard that she said was ours. Our dogs were right there with us and there was no indication that Mrs. Remse was frightened or upset with their presence nor did she refrain from coming out to see us when she saw the dogs. On this occasion I told her that the younger one still in his puppy stage was overly friendly and frisky and I doubted whether he would ever grow up. I told her that he loved to bark like he owned the place and he was an attention seeker just wanting to be patted, as opposed to the older one who was shy and aloof to people she doesn't know. She said she had no problem with dogs! She liked dogs!

Again, I would like to say that since Sept. 2007 when we moved to this area from Lexington not one of our neighbors has ever approached us saying they were fearful of our dogs.

Dec. 1st we received another phone call from Kathy Comeau regarding a letter written by John Mac Clure of 7 May's Field Road stating that in June or July 2009 the younger dog "charged and threatened" he and his son while biking around the cul-de-sac and "terrified" his father, mother, and sister. This letter was dated Nov 10th, 4 months after the "absolutely terrifying, and "life-threatening attack" of this vicious dog! And no phone call of complaint was ever received by the dog officer. Kathy Comeau regarding these incidences!

On Dec. 10th, 2009, we received a notice to appear at this meeting. The letter we received from the town of Lunenburg stated that "numerous complaints" have been made regarding our dogs when in fact the copies of all letters of complaint which I picked up at the town hall have only two neighbors listed; the Remses and the MacClures. And the only complaint by telephone to the dog officer, Kathy Comeau, was made by one neighbor, Kathy Remse on Nov. 4th, 2009.

Since Sept. 2007 when we moved into 14 May's Field Road, we have had neighborhood parents and their children come to our door trick-or treating for Halloween. Three Halloweens in which John and Cheryl MacClure with their son, Zachary, and Zachary's grandmother have come to our door with no apprehension or concern for their safety! The Remses have come in 2007 and 2008 but I do not recall them coming this past year. If our dogs are so menacing, threatening, and vicious why would anyone come anywhere near our property? If we are so incapable of controlling our pets why would you risk life and limb to ring our doorbell for candy!

We have four children and six grandchildren. We have never or would we ever have a dog in our home that would jeopardize the well-being of our family and friends. Our dogs are lovable, playful, affectionate, well-loved, and nurtured, our dogs are not ferocious and vicious.

Phyllis asetta 14 MAY'S Field Rd Junenbury, Ma

January 8, 2010

Board of Selectmen
Town of Lunenburg, Massachusetts
17 Main St.
P.O. Box 135
Lunenburg, MA 01462-0135
978-582-4144 wk
978-582-4148 fax

Kathryn M. Wrubel, Ph.D.
Animal Behavior Specialist
Intown Veterinary Group, Inc.
Massachusetts Veterinary Referral Hospital
20 Cabot Rd.
Woburn, MA 01801
781-305-2252 wk
781-897-6922 fax
kwrubel@intownvet.com

Dear Board of Selectmen:

I am a Ph.D. animal behavior specialist that provides consultations for dogs and cats with severe aggression and anxiety issues and other behavior problems at 3 veterinary referral hospitals in New England (Massachusetts Veterinary Referral Hospital, Essex County Veterinary Referral Hospital, and the Port City Veterinary Referral Hospital). I have over 14 years of experience in the animal behavior field and have completed post-doctoral training with world-renowned animal behaviorists.

I saw Riley for a behavior assessment on 12/14/09 at the Massachusetts Veterinary Referral Hospital in Woburn. I understand that there is a show cause hearing on January 12, 2010 at 7:15 p.m. due to complaints of vicious or barking dog(s) owned by Phyllis and Alan Asetta.

Riley is a 19 month-old castrated male American Staffordshire Terrier that was adopted by the Asettas from a private owner at 11 months of age. Riley's previous owner was a young man who had to put Riley up for adoption after he lost his job. He adopted Riley from a breeder in Waltham. The Asettas have owned American Staffordshire Terriers in the past and they are very familiar with the breed. There have been no complaints about other American Staffordshire Terriers the Asettas owned in the past at the same residence. The Asettas say that Stuka and Riley (their current dogs) are never out alone and are always supervised. The Asettas' other dog Stuka, a 6 year-old spayed female American Staffordshire Terrier, also came to the behavior appointment. She was adopted in September of 2007.

On 11/5/09, the Asettas were ordered to restrain Riley and their other dog Stuka to their

property and to keep them under control at all times by animal control officer Kathleen Comeau following a compliant from next-door neighbor Kathy Remse. The Asettas report that they have followed this order since it was given. There have been no incidents reported from neighbors regarding either Riley or Stuka since the order was given on 11/5/09. The complaints listed in the 11/10/09 letter that originate from the MacLures involve incidents they claim happened between June and July of 2009. They did not alert the animal control officer however until November of 2009, after Mrs. Kathy Remse reported a complaint about Riley running up to her in her driveway. The 11/10/09 letter states that no physical harm was done to Mrs. Remse at the time. In the same letter, the MacLures state that no physical harm was done to them when Riley and Stuka ran up to John and his son Zachery while they rode their bikes past the Asetta residence and also that no physical harm was done when John's relatives walked past the Asetta residence. The letter states that the dogs are 70-80 pounds each but Riley is actually 46 pounds.

A letter written on November 22nd by Mr. John MacClure states that "There can be no dispute that pit bull dogs are considered vicious.." and claims that any dog of the breed falls under Chapter 140 (Section 157). He says that he wants the dogs restrained, which the Asettas are willing to do and have done since the order sent on 11/5/09. Mr. MacClure writes about the Asettas being liable for damages as well as the Town of Lunenburg for not enforcing the statute which he claims includes all Pit Bulls because they are vicious. His letter seems to be generalizing into an attack on the Pit Bull breed and seems to have less to do with Riley as an individual dog. Riley is an American Staffordshire Terrier, which is considered to be a separate breed than the American Pit Bull Terrier, so this is something to consider in your hearing if Mr. MacClure wants to discuss his concerns about Pit Bulls.

Riley is described by the owners to be playful, clownish, lovable, sweet, friendly, and happy. He has no noise phobias, no owner-directed aggression, and no separation anxiety. The Asettas report that Riley gets along with family members wonderfully, including their grandchildren, and that he also gets along very well with Stuka. The owners admitted that Riley will run up to people to greet them/and that they have had issues getting him to come when called but they say that he is not a vicious dog and he has never been aggressive to a person. The owners reported that Riley does have some issues with jumping up and barking when he is excited to greet a person. The owners were working with Riley to train him not to do this and to listen to them better prior to our consultation.

Riley greeted and interacted with me nicely at the hospital. He was eager to meet me and was friendly. I diagnosed Riley with "Unruly Behavior". I see a lot of young Labrador Retrievers and Golden Retrievers with this issue, which includes jumping up, barking, not always listening to commands, and being excitable. I fitted him with a Gentle Leader head collar which will give the owners better physical control over him and allow them to correct him for unruley behavior in a painless way. Riley responded well to me fitting the head collar and to wearing it. Riley followed commands I gave him and enjoyed the click and treat training I did with him. He occasionally barked when people walked by the room (there is a window on the door). Riley and Stuka got along well with people in

the lobby. I did not observe the dogs on their own territory (only at the hospital). I recommended that the Asettas do not allow the dogs to be off-leash in their yard anymore. We discussed good ways to teach Riley to come when called and a non-confrontational program which will help to elevate both owners' leadership with Riley so he will listen to them better. Alan has been working with Riley on a shock collar for training which I recommended not using anymore (I only use positive-based training methods). Finally, we discussed ways to provide a lot of physical and mental stimulation for a young dog like Riley.

I would hope that the Board will consider in their decision:

- a. The Asettas willingness to follow the order sent on 11/5/09 to keep the dogs restrained to their property,
- b. the fact no incidents have been reported since this date,
- c. the fact that the dogs (even according to the neighbor's complaints) have never caused anyone physical harm,
- d. the Asettas honesty that Riley has engaged in unruly behavior,
- e. and the Asettas willingness to have Riley seen by a behavior specialist to work on his unruly behavior issues.

I am willing to come to the Asettas home to do some work with the dogs there or I can refer a trainer to them to do the same. I feel that if the dogs are confined, tied-up, or on leash the issue with the neighbors should be settled. The Asettas are willing to do this to appease the neighbors so I hope that the order from 11/5/09 will stand and that no further judgments will be made against the dogs at the hearing.

Thank you for your time. Please feel free to contact me with any questions or concerns.

Sincerely,

Kathryn M. Wrubel, Ph.D.



VCA Lancaster Animal Hospital 456 High St. Ext. Suite A Lancaster, MA 01523 (978)368-8363

(Doctor: John DeFanti DVM • Date: 12/10/2009 at 1:24PM • Invoice Number: 1310)

	Client			Patient		
Name: Address:	Phyllis Asetta 14 Mayfield Road Lunenburg, MA 01462	Acct, No:	 Name: Species: Breed: Color:	Riley Canine Terrier, Amer. Staffordshire Black And White	No: Sex: Birth: Weight:	1479 Male Neut. 06/05/2008 46.2 lbs

Rabies 1 Year Canine 1 17.00 17.0	Date	Description	Quantity	Price	Tax	Total Price
DA2P-Pv - 1 Year 1 17.00 17.0 Rabies 1 Year Canine 1 17.00 17.0	12/10/2009	Exam/Consultation	1	48.00		48.00
Rabies 1 Year Canine 1 17.00 17.00	1211012009		1	17.00		17.00
			1	17.00		17.00
Diviazaru 11 abez 1115,1111.		Biohazard Waste Mgmt.	1	4.99	******	4.99

	Preventive (e	are Status for⊧Ril	ey (Please Check for Accur	acy)	
Procedure	Due Date	Status	Procedure	Due Date	Status
Rabies Vaccine Bordetella Vaccine Leptospirosis Vaccine Parvo Vaccine Heartworm RX Refill Fecal Exam Giardia Vaccine Rattlesnake Vaccine	12/09/2010 12/09/2010 01/01/2010 05/27/2010	Declined Declined Current Due in 22 Days Current	Distemper Vaccine Heartworm Test Lyme Vaccine Dental Cleaning Physical Exam Flea Prevention Refill Rattlesnake Vaccine	12/09/2010 06/01/2010 12/09/2010 03/01/2010	Current Declined Not Recommended Current



VCA Lancaster Animal Hospital 456 High St. Ext. Suite A Lancaster, 08 01523 (978)368-8363

(Doctor: John DeFanti DVM • Date: 12/10/2009 at 1:24PM • Invoice Number: 1310)

	Client			Patient			
Name: Address:	Phyllis Asetta 14 Mayfield Road Lunenburg, MA 01462	Acct. No:		Name: Species: Breed: Color:	Stuka Canine Terrier, Amer. Staffordshire Brown	No: Sex: Birth: Weight:	1480 Female 04/09/2003 49.6 lbs

Date	Description	Quantity	Price	Tax	Total Price
2/10/2009 D.	A2P-Pv - 1 Year	1	17.00		17.00
	abies 1 Year Canine	1	17.00		17.00
	ohazard Waste Mgmt.	1	4.99		4.99
	cam/Consult/Add'l Pet	1.	43.20		43.20

	Preventive C	are Status for Stu	kar((Blease(Checkston Accurac	Y)	
Procedure	Due Date	Status	Procedure	Due Date	Status
Rabies Vaccine	12/09/2010	Current	Distemper Vaccine	12/09/2010	Current
Bordetella Vaccine		Declined	Heartworm Test	05/20/2010	Current
Leptospirosis Vaccine		Declined	Lyme Vaccine		Declined
Parvo Vaccine	12/09/2010		Dental Cleaning		Not Recommended
Heartworm RX Refill	01/01/2010	Due in 22 Days	Physical Exam	12/09/2010	Current
Fecal Exam	05/27/2010	Current	Flea Prevention Refill	03/01/2010	Current
Giardia Vaccine		Not Recommended	Rattlesnake Vaccine		Not Recommended
Rattlesnake Vaccine		Declined			

Invoice Notes 33 34	

<u>invoce Sum</u> i	pary and the second	
Total Price	Total Tax	Total Due
86.99		86.99
82.19		82.19
5	86.99	86.99

Cash:	0.00	Prev. Balance:	0.00
Check:	0.00	Total Due:	169.18
Debit Card:	169.18	Amount Paid:	169.18
		Amount Due:	0.00

Thank You: Kerri B



The Leader in Municipal Law RECEIVED

NOV - 2 2009

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F: 617.654.1735
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Brian W. Riley briley@k-plaw.com

Ms. Marion Benson Ritter Memorial Building Planning Director 960 Massachusetts Avenue Lunenburg, MA 01462

Re: Potential Conflict of Interest - Consultants to Planning Board

Dear Ms. Benson:

October 30, 2009

You have requested an opinion regarding the applicability of G.L. c.268A, the Conflict of Interest Law, to engineering consultants contracting with the Planning Board to perform peer review services. According to the information provided, the Planning Board has periodic need to contract with a private engineer to provide peer review of plans, etc. submitted by applicants for subdivision projects and other matters within the Board's jurisdiction. The project applicant is responsible for payment of the peer review consultant's services to the Board. The funds are paid by the applicant and kept in an account by the Town Treasurer, and released to the consultant upon approval of the applicant and your office.

You generally rotate engineering firms that you contract with for this service. Two such consultants are David Ross Associates, an Ayer firm with numerous professional staff members, and Marsden Engineering & Associates, a sole proprietorship of Steven Marsden in Lunenburg. At the conclusion of the particular project for which the consultant was hired, the consultant ceases providing services to the Town until such time as the firm is contracted for another project. These consultants may have opportunities to represent a private client in a matter involving a Town board or official. You have requested an opinion, on behalf of these consultants, as to the applicability of Chapter 268A and the limitations on the ability of the engineers and/or their associates to have other business with the Town while they are serving as peer review consultants. You also indicate that, depending on the advice in this letter, you may be asking that the Board of Selectmen designate the position of Planning Board peer review consultant as a "special municipal employee."

In my opinion, in most cases, the peer review consultants are "municipal employees" for purposes of Chapter 268A, during the periods that they are under contract. This result can differ for a firm if no specific individual is contracted for the work. If the consultant position is designated as a special municipal employee, the consultants will generally be able to represent private clients before any Town board or officer other than the Planning Board.

The definition of "municipal employee" is very broad and includes virtually every person providing services to the Town. As municipal employees, therefore, the peer review consultants are subject to the prohibitions and restrictions of the statute during those times that they are under

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Ms. Marion Benson October 30, 2009 Page 2

contract with the Planning Board. I have enclosed an Advisory from the State Ethics Commission on this general subject that may be useful. There are two sections of Chapter 268A, which I will discuss in detail below, that provide exemptions to "special municipal employees" that are not available to other municipal employees. In my opinion, the position of peer review consultant to the Planning Board is eligible for designation as a special municipal employee, provided that any compensation paid is for not more than 500 hours per year, or an average of approximately 9.5 hours per week. Please note that it is the office that is designated, not the individual that may hold that position at a given time. In this case, therefore, the hours for the various consultants combined should not exceed 500 per year to remain eligible.

There are limited circumstances, however, under which a consultant might not be deemed a "municipal employee," and the consultants should consider whether this exception applies to them. The term "municipal employee" applies to individuals, and not to business corporations or other entities. If the consultant is a sole proprietorship, such as Mr. Marsden, he will be considered a municipal employee and be subject to the prohibitions and restrictions of the statute. As stated in the enclosed Advisory, however, if the hired consultant is a relatively large firm or partnership, the specifics of the arrangement between the firm and the Town must be examined to determine whether the engineer working for the Planning Board is a "municipal employee." The relevant factors include (1) whether the services of a particular person are contracted for, as opposed to leaving that decision to the consultant; (2) the size of the company; (3) whether the individual working for the Board has specialized knowledge or experience in the particular matter; and (4) whether the individual has previously performed similar services for the Board. Using David Ross Associates as an example, if the Board typically contracts with the firm and allows the firm to determine which employee will provide the services, then neither the firm nor any individual employee would be a "municipal employee" and Chapter 268A would simply not apply to either. By contrast, if the Board has usually had Mr. Ross do the work, then he would likely be considered to be a municipal employee while under contract. Neither David Ross Associates itself nor the other employees of that firm would be municipal employees. Determining whether or not an officer or employee of a sizeable firm is a "municipal employee" depends on the facts of each situation and a balancing of the above factors - if a consultant is unsure, he would be advised to call the Ethics Commission's Legal Division for advice on this subject.

I will provide the following analysis under a presumption that the engineer performing the peer review work is a "municipal employee." There are several sections of Chapter 268A that should be examined in this regard. Section 17 prohibits a municipal employee from (a) receiving compensation from anyone other than the Town in relation to a particular matter in which the Town is a party or has a direct and substantial interest, and/or (b) acting as an agent for anyone other than the Town in such a matter. This section would prohibit, therefore, a peer review engineer from being compensated by a client or acting as an agent for a client in another matter in which the Town has an interest. "Acting as an agent" includes personally appearing on behalf of another person, making telephone calls to Town officials, or sending letters on behalf of the client to the Town. The

Ms. Marion Benson October 30, 2009 Page 3

State Ethics Commission also finds that if an engineer prepares a plan for a client and certifies it, and that plan is then filed with a Town office or board, the engineer has acted as an "agent" for the client. Therefore, while a peer review consultant is employed by the Town, he or she would be prohibited from doing work for a client if that work would be dealt with by <u>any</u> Town officer or board.

If the peer review consultant is a "special municipal employee," however, the restrictions are much less severe. A special municipal employee is permitted to act as an agent for or be compensated by a private party, provided that:

- the employee has not participated at any time as a municipal employee or special municipal employee in the matter;
- the matter is not and has not been the subject of the employee's official responsibility;
 and
- the matter is not pending in the municipal agency or board for which the employee works.

For example, a "special employee" peer review consultant is performing services for the Planning Board. He may work for clients and act as their agent in matters to go before other Town boards or officers, as long as the particular matter is not one that he participated in for the Planning Board, it has not been before the Planning Board while he was engaged for peer review work, and it is not currently pending before the Planning Board.

I would note that other employees of the peer review consultant's firm would also be able to appear before other boards, without having to worry about the consultant receiving any prohibited compensation, if the position is designated as a special municipal employee. On a related point, however, please note that c.268A, §18 prohibits a partner of a municipal employee (special or otherwise) from acting as an agent for a private party in a matter in which the municipal employee is participating or has participated. A consultant's firm would be advised, therefore, to avoid being hired for any project that is currently or has already been before the Planning Board if the consultant personally worked on the matter for the Planning Board.

Section 19 prohibits a municipal employee (special or otherwise) from participating in any particular matter in which he, his immediate family, or a business in which he serves as officer, director, trustee, partner or employee has a financial interest. Based on this section, a consultant would have to avoid working on behalf of the Planning Board on a matter in which his firm is engaged by a private party or otherwise has a financial interest in the matter.

Ms. Marion Benson October 30, 2009 Page 4

Based upon the above analysis, you and/or the consultants that regularly work with the Planning Board may wish to request that the Board of Selectmen vote to designate the position of peer review consultant as a "special municipal employee." This would ease the restrictions under G.L. c.268A, §17 that might otherwise prohibit the consultant or, in some cases, members of his firm from taking on private work that will involve interacting with Town boards or officials.

In accordance with G.L. c.268A, §22 and 930 CMR 1.03(3), I am required to file copies of this opinion with the Town Clerk and the State Ethics Commission. The Commission will have thirty days in which to issue its own determination, either concurring or disagreeing with this opinion. If you have further questions in this regard, please feel free to contact me.

Very truly yours,

Brian W. Riley

BWR/bp

Enc.

Board of Selectmen

Town Clerk

State Ethics Commission

Mr. Steven L. Marsden

Mr. David E. Ross

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